

## COMPLAINT BY A PRISONER UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983

Name: Smith WAYNE  
 (Last) (First) (Middle Initial)

Prisoner Number: T-82289

Institutional Address: CSP-LAC-B5-225-44750 both st. west  
Lancaster, CA, 93536

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

WAYNE Smith  
 (Enter your full name.)

vs.

SAN Francisco Police Department et al,

Deborah madden

(Enter the full name(s) of the defendant(s) in this action.)

**CV 15 4405**

Case No. \_\_\_\_\_  
 (Provided by the clerk upon filing)

**COMPLAINT UNDER THE  
 CIVIL RIGHTS ACT,  
 42 U.S.C. § 1983**

**I. Exhaustion of Administrative Remedies.**

**Note:** You must exhaust available administrative remedies before your claim can go forward. The court will dismiss any unexhausted claims.

A. Place of present confinement CSP-LAC-B5-225-4490 P.O. Box, Lancaster

B. Is there a grievance procedure in this institution? YES ☐ NO ☒

C. If so, did you present the facts in your complaint for review through the grievance procedure? YES ☐ NO ☒

D. If your answer is YES, list the appeal number and the date and result of the appeal at each level of review. If you did not pursue any available level of appeal, explain why.

1. Informal appeal: This appeals are dealing with the SAN  
Francisco Police Department et al, Deborah madden, Crime  
Laboratory Technician.

- 1 2. First formal level: \_\_\_\_\_  
 2 \_\_\_\_\_  
 3 \_\_\_\_\_  
 4 3. Second formal level: \_\_\_\_\_  
 5 \_\_\_\_\_  
 6 \_\_\_\_\_  
 7 4. Third formal level: \_\_\_\_\_  
 8 \_\_\_\_\_  
 9 \_\_\_\_\_

10 E. Is the last level to which you appealed the highest level of appeal available to you?

11 YES ☒ NO ☐

12 F. If you did not present your claim for review through the grievance procedure, explain why.

13 again this claim is against the SAN Francisco police Department et al,  
 14 Crime Laboratory Technician, Deborah Madden  
 15 \_\_\_\_\_

16 **II. Parties.**

17 A. Write your name and present address. Do the same for additional plaintiffs, if any.

18 WAYNE Smith # T-82789  
 19 CSP-LAC 035-225 • P.O. Box 4490  
 20 Lancaster, CA 93539

21 B. For each defendant, provide full name, official position and place of employment.

22 Crime Laboratory Technician, Deborah Madden, SAN Francisco  
 23 Police Department et al.  
 24 \_\_\_\_\_  
 25 \_\_\_\_\_  
 26 \_\_\_\_\_  
 27 \_\_\_\_\_  
 28 \_\_\_\_\_

### III. Statement of Claim.

State briefly the facts of your case. Be sure to describe how each defendant is involved and to include dates, when possible. Do not give any legal arguments or cite any cases or statutes. If you have more than one claim, each claim should be set forth in a separate numbered paragraph.

Crime Laboratory Technician, Deborah madden of and who is payed  
by the SAN Francisco Police Department was charged with fraud  
in Federal court. "See page 1 of all causes of action"

### IV. Relief.

Your complaint must include a request for specific relief. State briefly exactly what you want the court to do for you. Do not make legal arguments and do not cite any cases or statutes.

Plaintiff is asking compensatry damages and punitive damages  
in the amount of \$20,000,000.00

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed on: 10 - 15 - 15

Date

Wayne Smith

Signature of Plaintiff

1 WAYNE Smith \*T-82789

2 CSP-LAL-B5-225

3 P.O. Box 4490

4 LANCASTER, CA. 93539

5  
6 U.S. Court OF APPEALS  
7

8 WAYNE W. Smith,

9 Appellant

AL40866 • Super. Ct. No CGC-12-518791 •

10 S227937

11 VS.

12 Appellant Appeal •

13 SAN FRANCISCO Police

14 Department et al.;

15 Respondents.  
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Court of Appeal, First Appellate District, Division Two - No. A140866

S227937

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

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WAYNE SMITH, Plaintiff and Appellant,

v.

SAN FRANCISCO POLICE DEPARTMENT, et al., Defendants and Respondents.

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The petition for review is denied.

Werdegar, J., was absent and did not participate.

SUPREME COURT  
**FILED**

SEP 09 2015

Frank A. McGuire Clerk

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Deputy

**CANTIL-SAKAUYE**

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*Chief Justice*

1 WAYNE Smith #T-82789

2 CSP-LAC-B5-225

3 P.O. BOX 4496

4 LANCASTER, CA. 93539

5  
6 SUPREME COURT OF CALIFORNIA  
7

8 WAYNE W. SMITH

A140866

9 Plaintiff and Appellant,

10 (SAN Francisco City and County  
11 V. Super. Ct. No. CGC-12-518791)  
12

13 SAN FRANCISCO POLICE

PETITION For REVIEW

14 DEPARTMENT et al.,

15 Defendants and Respondents,  
16  
17

18 Dear SUPREME COURT OF CALIFORNIA:  
19

20 D. Plaintiff is asking the COURT's Can they REVIEW this Discussion  
21 About Plaintiff asking for a Extension of time to serve the  
22 Summons and Complaint  
23  
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27  
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A140866

Wayne Smith  
Booking #: T-82789  
CSP-LAC B4-128  
P. O. Box 4490  
Lancaster, CA 93539

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pa

COPY

Filed 6/26/15

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

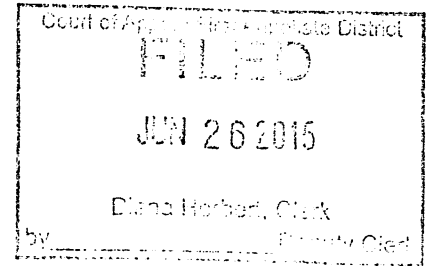
WAYNE W. SMITH,  
Plaintiff and Appellant,

v.

SAN FRANCISCO POLICE  
DEPARTMENT et al.,  
Defendants and Respondents.

A140866

(San Francisco City and County  
Super. Ct. No. CGC-12-518791)



Wayne W. Smith appeals from a trial court order dismissing this action for failure to serve the summons and complaint. He asks this court for an extension of time to serve the summons and complaint. We affirm.

**STATEMENT OF THE CASE AND FACTS**

On February 29, 2012, appellant filed a complaint against San Francisco Crime Laboratory Technician Deborah Madden for general negligence and other causes of action.<sup>1</sup> The complaint alleged that the defendant “habitually failed to do the required thing,” was “careless, not paying enough heed; neglectful” and “inattentive,” and “was negligen[t] from the time she was arrested on October 2, 2007 for domestic violence and assault charges and being investigated for tampering with drugs.” The complaint stated that Madden was arrested in 2007

<sup>1</sup> The complaint describes this as an action “for professional negligence, fraud, false arrest, violation of constitutional right, negligence, pain and suffering, harassment, conviction, medical expenses, wage loss, general damage compensatory damages, punitive damages.”



the action should not be dismissed, or sanctions imposed, for failure to “file proof of service on defendant(s) and obtain answer(s), or enter default(s).”

On November 30, 2012, appellant, now at California State Prison, Lancaster, filed a document entitled “Order to Show Cause.” Appellant stated, “Plaintiff, show cause why this action should not be dismissed or why sanctions should not be imposed for failure to; because Deborah madden retired, because investigation linked her to missing drugs. (See Exhibits ‘C’ – ‘G’) and (complaint).” Appellant stated that Madden had pleaded guilty to possession of cocaine, had been indicted by a federal grand jury on a charge of violating the United States Controlled Substances Act, and had a mistrial in October 2012, and asked for the case to go to trial or settlement.

In December, the January 8, 2013, date for the court’s order to show cause hearing was cancelled and appellant was ordered to show cause on April 9, 2013, why the action should not be dismissed, or sanctions imposed, for failure to file proof of service and obtain answers or enter defaults.

On March 1, 2013, the superior court clerk issued a notice to appellant stating that his request to enter default against Madden, submitted that day, could not be processed because the original proof of service had not been filed. The notice cited Code of Civil Procedure sections 417.10 and 417.30. The form further stated, “1. No original proof of service on the summons & complaint. 2. No request for entry of default. 3. There was no service on the defendant. (Form enclosed.)”

On March 13, 2013, the clerk issued another notice stating that the request to enter Madden’s default appellant had filed that day could not be processed, again because the original proof of service had not been filed. The notice additionally stated, “Name of defendant must be exactly as stated on complaint. Declaration re: discrepancy, corrected proof of service or incorrect name amendment is required. [¶] Proof of service of a statement of damages was not submitted per CCP § 425.11. The time for defendant to respond runs from service

to none of the courts order, or plaintiff's motions. [¶] Plaintiff is asking the courts to entry of Default judgment if defendants do not follow these court orders."

The order to show cause hearing set for July 9, 2013, was cancelled and the matter set for December 10, 2013. This order, in addition to directing appellant to show cause why the action should not be dismissed, or sanctions imposed, for failure to file proof of service, obtain answers or enter defaults, included the following: "\*\*\*NOTE: Plaintiff must file a proof of service of the complaint before default can be sought."

On December 10, 2013, appellant appeared in propria persona, by telephone. The order to show cause was ordered off calendar and dissolved "due to inactivity." The case was dismissed by court order dated December 12, 2013.

Appellant filed a timely notice of appeal on January 15, 2014.<sup>2</sup>

### DISCUSSION

Appellant's opening brief asks this court "for an extension of time until[] his release date of 9-20-15, so that plaintiff can get to a internet to find Defendant." The entirety of appellant's argument is as follows:

"4. Appellant has been due diligence [*sic*], compl[i]ed with all court orders all through this complaint.

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<sup>2</sup> Appellant's designation of record, filed on February 10, 2014, designated "what ever documents and oral proceedings the court may have." Appellant was informed by the court clerk that in order to procure the record on appeal he needed to specify the date of each proceeding to be included in the reporter's transcript (rule 8.130(a)(1)) and either deposit the fees for the reporter's transcript or a waiver (rule 130(b)); the default was not cured within the required time, and on March 6 the clerk filed a "Certificate re Dismissal of Appeal" requesting that the appeal be dismissed (rule 8.140). Appellant then requested reporter's transcripts for August 1, 2012, November 7, 2012, January 8, 2013, April 9, 2013, July 9, 2013, and December 10, 2013. On March 1, the clerk informed appellant that no hearings were held on the first five dates specified, the proceedings on December 10, 2013, were not reported, and the court's February 29, 2012, order granting a waiver of court fees and costs was on file.

“Trial Court Rules.” Local rule 3.1, aside from its reference to physical locations in the superior court, cites rule 3.110, which appears in title 3 of the Rules of Court, the title containing the “Civil Rules” (rule 3.1) that “apply to all civil cases in the superior courts . . .” (rule 3.10).

We find no indication in the record that appellant ever asked the trial court for an extension of time for service, and he does not argue that any such request was made and improperly denied. Appellant offers no authority for this court to order the extension in the first instance, and no argument why the trial court’s order should be reversed.<sup>5</sup>

The order of dismissal is affirmed.

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<sup>5</sup> We note that appellant has not raised any claim that he was denied access to the courts. (See, *Apollo v. Gyaami* (2008) 167 Cal.App.4th 1468 [error to grant summary judgment against indigent prisoner without first ensuring right to meaningful access to courts to prosecute bona fide civil claim was protected; issues included legal documents mailed by inmate in advance of deadlines but not timely filed due to circumstances beyond his control, court failing to make requested orders required for inmate’s appearance at hearing, summary judgment granted without waiting for inmate, who had not been informed of changed time of hearing or granted order to appear at the new time].) Nor does the record suggest a basis for such a claim. It appears appellant was able to file pleadings and communicate with the court, and he appeared by telephone at the December 10, 2013, hearing. Additionally, we have no basis for assessing whether time may yet remain for appellant to try again to file and serve an action before expiration of the statute of limitations, as the record provides us no information about the particulars of appellant’s criminal case or when he learned of the conduct by Madden that forms the basis of his civil claim.

PROOF OF SERVICE BY MAIL

(CCP §§1013(a), 2015.5; 28 U.S.C. §1746)

I, WAYNE Smith #T-82784, hereby declare that I am over the age of 18, I am the petitioner in the above-entitled cause of action, and my legal mailing address CSP/LAC - B5-

225, P.O. BOX <sup>4490</sup>~~8457~~, Lancaster, CA 93539-<sup>4490</sup>~~8457~~.

On 10-15-15, I delegated to prison officials the task of mailing, via the institution's internal mail system (*Houston v. Lack*, 487 US 266 [101 L.Ed.2d 245; 108 S.Ct. 2379] (1988)), the below entitled legal document(s): PETITION FOR REVIEW

Appellant Appeal

by placing said documents in a properly addressed and sealed envelope, with postage fully prepaid, in the United States Mail, deposited in the manner provided by CSP/LAC, and addressed

as follows: SUPREME COURT of California / U.S. Courthouse  
San Francisco office / 450 Golden Gate Ave.  
350 McAllister St. / SF, CA. 94102-3483  
SAN Francisco, CA. 94102-7303

I further declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 15 day of Oct. 2015 at California State Prison - Los Angeles County.

Wayne Smith 10-15-15  
Wayne Smith 7-19-15  
Wayne Smith 9-15-15